



THE CITY OF NEW YORK
LAW DEPARTMENT

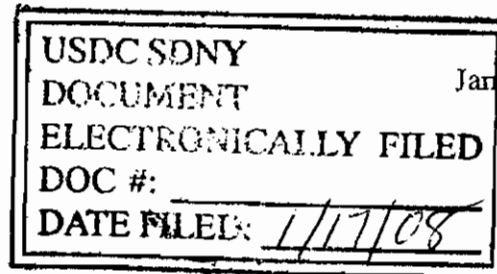
100 CHURCH STREET
NEW YORK, NY 10007

MICHAEL A. CARDOZO
Corporation Counsel

JEFFREY A. DOUGHERTY
Special Assistant Corporation Counsel
Room 3-126
Telephone: (212) 788-8342
Facsimile: (212) 788-9776
jdougher@law.nyc.gov

BY FACSIMILE

The Honorable James C. Francis IV
United States Magistrate Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street – Room 1960
New York, New York 10007-1312



January 11, 2008

SUBMITTED UNDER SEAL - REFERS TO CONFIDENTIAL INFORMATION

Re: Adams, et al, v. City of New York, et al., 05 CV 9484 (RJS) (JCF)

Dear Judge Francis:

I write regarding the above action, which is an RNC case consolidated before Your Honor. Defendants request that pursuant to Rules 37(b)(2) and 41(b) of the Federal Rules of Civil Procedure that plaintiffs Christopher Agnese's and James Graham's (together "Plaintiffs") claims for emotional distress be dismissed with prejudice.

Plaintiffs have alleged emotional distress as a result of their arrests and detentions.¹ As Your Honor is aware, in the consolidated RNC cases, those plaintiffs who have alleged emotional distress damages have been compelled to: "(1) *identify all* providers who have provided them psychological or psychiatric counseling or treatment, (2) provide *releases* with respect to records maintained by these *providers*, and (3) provide *releases* for all *pharmacies* that have filled prescription drugs used by plaintiffs in connection with any psychological or emotional conditions."² On April 4, 2007, Your Honor dismissed the emotional distress claims

¹ See Second Amended Complaint at ¶¶ 20, 23, 26, 29, 32, and 35. ("As a result of the foregoing [arrest and detentions], plaintiffs . . . suffered . . . emotional distress and psychological injury [and] great humiliation").

² See Your Honor's 11/16/06 Order in *Abdell v. City of N.Y.*, 05 Civ. 8453 at ¶ 1 ("[p]laintiffs shall provide the requested information by November 30, 2006. This issue has been fully litigated and decided by the following

Continued...

of various Abdell plaintiffs who refused to comply with the Court's order requiring disclosure of documents, releases and information relating to their mental health history.³ Similarly, on August 24, 2007, Your Honor dismissed the claims of numerous Adams plaintiffs who failed to provide discovery of their psychological histories.⁴ Moreover, Judge Karas upheld the dismissal of RNC plaintiffs' mental-health related claims based on their failure to provide this type of discovery.⁵ Significantly, Judge Karas upheld the dismissal under the *de novo* standard.⁶

Despite their awareness of these orders, Plaintiffs have indicated they will not comply with any order compelling them to provide this discovery.⁷ Therefore, their claims for mental and emotional injuries and damages should be dismissed with prejudice.

For all of the reasons stated above, defendants respectfully request that the Court enter an order dismissing, with prejudice, the claims for mental and emotional injuries and damages of plaintiffs Agnese and Graham. 11

Respectfully submitted,

Jeffrey A. Dougherty
Jeffrey A. Dougherty

cc: Michael L. Spiegel, Esq.
Rick Best, Esq.

11/17/08
Application granted for the claims
set forth in the Cohen, Hershey-Wilson,
Concepcion, and similar cases.
SO ORDERED.
James C. Francis IV
USMJ

related cases: MacNamara, 04 Civ. 9126 (Ruling dated Aug. 29, 2005); Hershey-Wilson, 05 Civ. 7026 (Order dated Feb. 2, 2006) Jarick, 05 Civ. 7626 (Order dated May 16, 2006); and Concepcion, 05 Civ. 8501 (Order dated Oct. 23, 2006)). (emphasis added).

³ See Your Honor's April 4, 2007 Order in Abdell.

⁴ See Your Honor's August 24, 2007 Order in Adams.

⁵ See Cohen v. City of N.Y., 05 Civ. 6780 (KMK) (JCF), 2007 WL 2789272, at *2-6, (S.D.N.Y. Sept. 25, 2007) (affirming dismissal of plaintiffs' emotional distress claims under *de novo* standard based on failure to provide discovery of psychiatric histories).

⁶ See id.

⁷ See January 10, 2008 letter from Michael L. Spiegel at pp. 2, 4 indicating plaintiffs Agnese and Graham "decline[] to provide releases for mental health treatment." A copy of the January 10, 2008 letter is attached as Ex. A.